

**STATE OF INDIANA – COUNTY OF ADAMS
IN THE ADAMS CIRCUIT AND SUPERIOR COURTS**

**Notice of Proposed Local Rule Amendments for
Adams County Courts of Record and
Request for Supreme Court Approval
October 13, 2008**

In accordance with Administrative Rule 1(E) of the Indiana Court Rules, and Trial Rule 81, the Adams Circuit and Superior Courts hereby give notice to the bar and the public that the Courts propose to amend the Local Rules setting forth the caseload allocation plan for the courts of record of Adams County, the rule on special judge assignments in criminal and civil cases, and certain other rules, to be effective January 1, 2009. All new text is shown by underlining and deleted text is shown by ~~striketrough~~. Supreme Court approval is required for the Local Rules for the caseload allocation plan pursuant to Admin. R. 1(E) and special judge assignments in civil and criminal cases under TR 79(H) and CR2.2 and may not take effect until approved by the Supreme Court.

In accordance with Trial Rule 81(B), and because good cause exists under TR 81(D) to deviate from the schedule for amending local court rules, the time period for the bar and the public to comment shall begin on October 13, 2008 and shall close on November 13, 2008. The proposed amendments to the rules will be adopted, modified or rejected after comments have been made and the final version of the rules will be submitted to the Indiana Supreme Court for review and approval.

Comments by the bar and the public should be made in writing by email to vhammond@co.adams.in.us or by mail to:

Vickie Hammond, Court Administrator
Adams Circuit Court
Attn: Public Comment on Local Rules
P. O. Box 610
Decatur, IN 46733

A paper copy of the proposed amended local rules will be made available for viewing in the office of the Clerk of Adams County during normal business hours. Persons with Internet access may view the proposed amended local rules at the following website:

<http://www.in.gov/judiciary/adams/>

IN THE MATTER OF)
REQUEST FOR APPROVAL)
OF LOCAL RULES) CAUSE NO.
FOR COURTS OF RECORD IN)
ADAMS COUNTY)

LR01-CR2.2-01 --CASE ASSIGNMENT

(A) Misdemeanors and D Felonies: Unless otherwise provided in these rules, all cases wherein the most serious charge is a Class D Felony or a Misdemeanor shall be assigned to Adams Superior Court.

(B) All Felonies Except D Felonies: Unless otherwise provided in these rules, all cases wherein the most serious charge is greater than a Class D Felony shall be assigned to Adams Circuit Court. For example, if any felony greater than a Class D Felony is filed it shall be assigned to Adams Circuit Court along with any additional criminal charges regardless of whether or not those additional criminal charges are Class A Misdemeanors or Class D Felonies.

(C) Criminal Non-Support: All cases involving allegations of criminal non-support shall be assigned to the Court which had original jurisdiction of any filing of a Petition for Dissolution of Marriage, Dissolution Decree, Paternity Determination, or similar case filed. It is the objective of this provision to eliminate two Courts addressing the same party and related issues. If no prior case has been filed, such cases shall be filed in accordance with the rules previously set forth

(D) Protective Orders and Invasion of Privacy: If a Dissolution of Marriage is pending or has been granted to the parties or if a paternity action has been filed or has been determined and subsequently one of the parties petitions for a protective order against the other party, said protective order shall be assigned to the Court which originally addressed the dissolution or paternity. When a Protective Order has been granted in one of the Courts and a subsequent Petition for Dissolution is filed in the other Court after the Order of Protection has been granted such that it is not clear pursuant to I.C. 34-26-5-6(4) which Court should receive the case, for reasons of judicial economy it being probable that the Court that heard the Order of Protection case has heard substantial matters pertaining to Provisional matters, the Court which heard the Protective Order will then become the preferred venue, and the subsequently filed Petition for Dissolution will be transferred to the Court that originally heard the Protection Order proceeding without further costs charged. The purpose of this policy is to assure that the same Court which has determined custody and visitation will also determine the terms of the protective order so that visitation can be assured while simultaneously the appropriate parties are protected. Therefore, any violation of a protective order (invasion of privacy) involving such parties shall likewise be filed in the Court originally addressing the dissolution or paternity and where the protective order was issued. It is the expressed desire of the Court to eliminate duplication and confusion in regards to multiple orders for various purposes involving the same parties.

(E) Pending Cases: ~~Cases involving offenders who have charges pending in either court, or prior convictions in either Court may be filed in that Court despite the provisions of Paragraphs (A) and (D).~~ Where there is a higher level felony case filed or to be filed and there is one or more D Felony or Misdemeanor case(s) in Superior Court, the Superior Court D Felony or misdemeanor case(s) shall be transferred to the Circuit Court following filing of the A-B-C felony in Circuit Court.

LR01-CR2.2-02 TRANSFER

(A) Circuit to Superior: A Judge of Adams Circuit Court, by appropriate order entered in the Record of Judgments and Orders, with the consent of the Judge of Adams Superior Court, may transfer and reassign any criminal case to Superior Court pursuant to the authority of I.C. 33-33-1-4.

(B) Superior to Circuit: A Judge of the Adams Superior Court, by appropriate order entered in the Record of Judgments and Orders, with the consent of the Judge of Adams Circuit Court, may transfer and reassign any criminal case to Circuit Court pursuant to the authority of I.C. 33-33-1-4.

LR01-CR2.2-03 --REFILING AND SUBSEQUENT FILINGS

When the State of Indiana dismisses a case and chooses to refile that case, the case shall be assigned to the Court from which the dismissal was taken unless Local Rule 1 (above) regarding case assignment dictates otherwise. For example, a case may originally be filed as a Class D Felony Battery, later is dismissed, and subsequently is filed as Murder, a Class A Felony. Local Rule 1 in regard to case assignment shall take precedence and it shall be filed in Circuit Court

LR01-CR2.2-04 --REASSIGNMENT

(A) Circuit Court: In the event a change of Judge is granted where it becomes necessary to assign another Judge in any felony or misdemeanor proceeding in Adams Circuit Court, the case shall be reassigned to Adams Superior Court.

(B) Superior Court: In the event a change of Judge is granted or it becomes necessary to assign another Judge in any felony or misdemeanor proceeding in Adams Superior Court, the case shall be reassigned to Adams Circuit Court.

(C) Alternative: In the event that a reassignment can not be accomplished pursuant to the rules set forth above, then the case will be reassigned in consecutive order to the following Judges: the regular Judge of the Jay Circuit Court; the regular Judge of the Jay Superior Court; the regular Judge of the Wells Superior Court; and the regular Judge of the Wells Circuit Court.

LR01-CR2.2-05 --APPOINTMENT OF SPECIAL JUDGE

In the event no Judge is available for assignment or reassignment of a felony or misdemeanor case, such case shall be certified to the Indiana Supreme Court for the appointment of a Special Judge. In the event the Judge presiding in a felony or misdemeanor case concludes that the unique circumstances presented in such proceeding require appointment by the Indiana Supreme Court of a Special Judge, this presiding Judge may request the Indiana Supreme Court for such appointment.

LR01-AR15-01 *Definitions:* The Court adopts the definitions indicated in

Administrative Rule 15, which are set forth below:

(a) *A Court Reporter* is a person who is specifically designated by a court to perform the official court reporting services for the court including preparing a transcript of the record.

(b) *Equipment* means all physical items owned by the court or other government entity and used by a court reporter in performing court reporting services. Equipment shall include, but not be limited to, telephones, computer hardware, software programs, disks, tapes and any other device used for recording and storing, and transcribing electronic data.

(c) *Work space* means that portion of the court's facilities dedicated to each court reporter, including but not limited to actual space in the courtroom and any designated office space.

(d) *Page* means the page unit of transcript which results when a recording is transcribed in the form required by Indiana Rule of Appellate Procedure 7.2.

(e) *Recording* means the electronic, mechanical, stenographic or other recording made as required by Indiana Rule of Trial Procedure 74.

(f) *Regular hours worked* means those hours which the court is regularly scheduled to work during any given work week. Depending on the particular court, these hours may vary from court to court and county to county, but remain the same for each work week.

(g) *Gap hours worked* means those hours worked that are in excess of the regular hours worked but hours not in excess of forty (40) hours per work week.

(h) *Overtime* hours worked means those hours worked in excess of forty (40) hours per work week.

(i) *Work week* means a seven (7) consecutive day week that consistently begins and ends on the same days throughout the year, i.e. Sunday through Saturday, Wednesday through Tuesday, and Friday through Thursday.

(j) *Court* means the particular court for which the court reporter performs services. Depending upon the county, *Court* may also mean a group of courts, i.e. “X county Courts”.

(k) *County indigent transcript* means a transcript that is paid for from county funds and is for the use on behalf of a litigant who has been declared indigent by a court. The county indigent transcript will also include any requests from the Local Prosecutor’s Office.

(l) *State indigent transcript* means a transcript that is paid for from state funds and is for the use on behalf of a litigant who has been declared indigent by a court.

(m) *Private transcript* means a transcript, including but not limited to a deposition transcript that is paid for by a private party.

LR01-AR15-02 *Annual Salary:* Each Court Reporter shall be paid an annual salary for the time spent working under the control, direction and direct supervision of the Court during any regular work hours or overtime hours. Said salary shall be set by the Court each year and incorporated in the county salary ordinance.

LR01-AR15-03 *Indigent transcripts:* Considering the past experience of the Courts, it is anticipated that most indigent transcripts will be required to be prepared at a time other than regular work hours. For any such transcripts prepared by the Court Reporter at a time other than regular work hours, said Court Reporter shall be paid a per page fee of ~~\$4.00~~ \$4.50 per page. For these services, the Court Reporter shall submit a claim directly to the county for any county indigent transcript and shall submit a claim to the state for any state indigent transcripts. If any indigent transcript is prepared during regular work

hours, the Court Reporter shall be paid the regular salary and no per page fee shall be submitted or allowed.

If Court Reporter is requested to prepare an expedited transcript, the maximum per page fee shall be ~~\$7.50~~ \$8.00 per page where the transcript must be prepared within 24 hours or less and ~~\$7.00~~ \$7.50 per page where the transcript must be prepared within 7 days. A minimum fee of ~~\$40.00~~ \$45.00 will be charged for transcripts less than 10 pages in length. The time spent binding the transcript, exhibit and index volumes will be at an hourly rate of what the employee earns at an hourly rate. The Court Reporter may charge up to \$1.00 per page for a copy of a transcript or an exhibit.

LR01-AR15-04 *Private transcripts:* Considering the past experience of the Courts, it is anticipated that most private transcripts will be required to be prepared at a time other than regular work hours, just as is done with indigent transcripts mentioned above.

Therefore, for any such private transcripts prepared by the Court Reporter at a time other than regular work hours, said Court Reporter shall be paid a per page fee of ~~\$4.00~~ \$4.50 per page. The Courts do not anticipate that said private transcripts will be prepared during work hours, but if this does occur, the Court Reporter shall be paid regular salary and the per page fee of ~~\$4.00~~ \$4.50 shall be paid to the county.

If Court Reporter is requested to prepare an expedited transcript, the maximum per page fee shall be ~~\$7.50~~ \$8.00 per page where the transcript must be prepared within 24 hours or less and ~~\$7.00~~ \$7.50 per page where the transcript must be prepared within 7 days,. A minimum fee of ~~\$40.00~~ \$45.00 will be charged for transcripts less than 10 pages in length. The time spent binding the transcript, exhibit and index volumes will be at an

hourly rate of what the employee earns at an hourly rate. The Court may charge up to \$1.00 per page for a copy of a transcript or an exhibit.

LR01-AR15-05 Each Court Reporter shall submit a report, at least on an annual basis to the Indiana Supreme Court Division of State Administration, on forms prescribed by the Division, all transcript fees (either county indigent, state indigent or private) received by the Court Reporter.

LR01-AR15-06 *Gap and overtime hours:* The Court Reporters in the Adams County Courts work 40 hours per week and, therefore, there is no “gap time”. Over-time hours shall be paid at one and one-half (1 ½) times the equivalent of the hourly rate or as prescribed by county government rules, ordinances, or by state statute. Over-time also may be compensated by compensatory time and said compensatory time shall be utilized within 180 days of the approval of said time. (The Court recognizes that the county might require use of compensatory time in the week following its accrual, but such a requirement cannot be utilized by the Court. For example, a week long jury trial might require extensive over-time, but the jury trial might also delay many hearings and trials to the following week when the presence of the Court Reporter is absolutely necessary and, therefore, compensatory time, to be effective, must be utilized at a later date). Any overtime that is satisfied by compensatory time shall be one and a half times the hours worked overtime, for example, four hours overtime would be compensated by six hours of time off regular work hours.

LR01-AR15-07 *Use of equipment:* The Courts recognize that relatively few transcripts are prepared by a Court Reporter during the course of a year. The Courts also recognize that depositions for private individuals other than Court related transcripts are not prepared by the Court Reporters. Therefore, it is not feasible for the Court Reporters to purchase machines, other equipment, paper, etc. for the preparation of transcripts, depositions and other matters. These transcripts are prepared by the Court Reporter solely in the official capacity as Court Reporter. Therefore, the “per page” charge which is set forth above anticipates that the Court Reporter is entitled to utilize the equipment and materials of the Court and that the compensation is, therefore, solely for the Court Reporter’s labor.

Copies: Copies of this rule shall be provided to all present court reporters and any court reporter who is hired by the Court subsequent to the date of this order. Likewise, an executed copy of this order shall be forwarded to the Indiana Supreme Court for approval all in accordance with Administrative Rule 15.

AMENDED
ADAMS COUNTY CASELOAD RULE

WHEREAS, on July 16, 1999, the Supreme Court of Indiana issued an Order for Development of Local Caseload Plan.

WHEREAS, on September 2, 1999, the majority of Judges in District 3 met in an effort to comply with the Supreme Court’s Order and to provide for an efficient method of resolving legal disputes arising in the District 3 counties.

WHEREAS, the undersigned Judges agreed to adopt a Uniform Local Rule complying with the District 3 Caseload Distribution Rule ~~made September 2, 1999~~ revised May 13, 2008.

WHEREAS, the Adams ~~Circuit~~ Superior Court ~~currently has~~ will have a newly ~~appointed~~ elected judge with the normal likelihood of unusual statistics following such ~~appointment~~ election in November, 2008.

WHEREAS, the underutilized courts near or adjoining Adams County include Jay Circuit and Superior Court and Blackford Superior Court (which are in administrative District 6) but because of travel distance are among the most logical additional choices for Special Judge appointment of cases from Adams County courts.

NOW THEREFORE, the following Local Rules are adopted:

LR01-TR79-01 DEFINITIONS

1.1 “Over-utilized counties” – Counties in which, according to the most recent Weighted Caseload Measure (WCM), the judicial officers are being utilized at greater than the statewide average.

1.2 “Under-utilized counties” – Counties in which, according to the most recent WCM, the judicial officers are being utilized at more than twenty-five (25) percentage points below the statewide average.

1.3 “Other counties” – Counties in which, according to the most recent WCM, the judicial officers are being utilized at the statewide average, or within twenty-five (25) percentage points below the statewide average.

LR01-TR79-02

2.1 Whenever selection of a special judge is required under Trial Rule 76 or Trial Rule 79(H), this shall be the exclusive method for selection of special judges.

2.2 In an “Over-Utilized County”, special judges shall be selected exclusively from a list of judicial officers presiding in courts in “Under-Utilized Counties.” To fairly and evenly distribute these assignments and to address geographic considerations, appointment of special judges in “Over-Utilized Counties”, based upon the ~~1998~~ 2007 WCM, shall be as follows:

A. Special judges serving Allen County shall be selected from the ~~nine (9)~~ seven (7) judicial officers sitting in Adams, ~~LaGrange~~, Steuben and Wells counties;

B. Special judges serving ~~DeKalb~~ Noble County shall be selected from the ~~Five (5)~~ seven (7) judicial officers sitting in ~~LaGrange and~~ Adams, Steuben and Wells counties;

C. ~~Special judges serving Huntington County shall be selected from the four (4) judicial officers sitting in Adams and Wells counties.~~

2.3 In an “Under-Utilized County”, special judges shall be selected exclusively from a list of judicial officers sitting in other “Under-Utilized Counties”. To fairly and evenly distribute these assignments and to address geographic considerations, appointment of special judges in “Under-Utilized Counties”, based upon the ~~1998~~ 2007 WCM, shall be as follows:

A. Special judges serving Adams County shall be selected from the other judicial officer sitting in Adams County and the two (2) judicial officers sitting in Wells County;

~~B. Special judges serving LaGrange County shall be selected from the other judicial officers sitting in LaGrange County and the three (3) judicial officers sitting in Steuben County;~~

~~B~~C. Special judges serving Steuben County shall be selected from the other judicial officer sitting in Steuben County and the two (2) judicial officers sitting in LaGrange County.

~~C. D.~~ Special judges serving Wells County shall be selected from the other judicial officer sitting in Wells County and the two (2) judicial officers sitting in Adams County.

2.4 In an “Other County”, special judges will be selected from counties which are similarly situated. To fairly and evenly distribute these assignments and to address geographic considerations, appointment of special judges, based upon the ~~1998~~ 2007 WCM, shall be as follows:

~~A. Special judges serving Noble County shall be selected from the other judicial officers sitting in Noble County and the two (2) judicial officers sitting in Whitley County.~~

~~B. Special judges serving Whitley County shall be selected from the other judicial officer sitting in Whitley County and the three (3) judicial officers sitting in Noble County.~~

A. A special judge serving Huntington County shall be the judicial officer sitting in said County. If said other judicial officer does not qualify, special judges shall be selected from the two (2) judicial officers sitting in Whitley County.

B. Special judges serving Whitley County shall be selected from the other judicial officer sitting in said County and the two (2) judicial officers sitting in Huntington County.

C. Special Judges serving DeKalb County shall be selected from the other two (2) judicial officers sitting in said county. If neither of said judicial officers qualify, special judges shall be selected from the two (2) judicial officers sitting in LaGrange County.

D. A Special judge serving LaGrange County shall be the other judicial officer sitting in said County. If said other judicial officer, does not qualify special judges shall be selected from the three (3) judicial officers sitting in DeKalb County.

2.5 Each judge in every court of District 3 shall maintain a list of judges available to serve as special judge in his or her court. The list shall remain confidential to the judge and his or her designated staff. The method for selection of a special judge from the list shall be sequential, that is, from top to bottom, until each judicial officer has been selected. No judicial officer appearing on the list shall be selected more than once until all judicial officers have been selected.

2.6 The special judge selected hereunder, with agreement of the parties, may shall ~~have the sole discretion to~~ transfer the proceeding under Trial Rule 79(M).

2.7 Each special judge, who receives a case hereunder, shall maintain a statistical record of the number, case type and disposition of each case received to quantify the additional caseload and shall report same to the Division of State Court Administration on a quarterly basis.

2.8 Each judge, who assigns a special judge hereunder, shall maintain a statistical record of the number and case type of each case assigned and shall report same to the Division of State Court Administration on a quarterly basis.

2.9 This rule applies only to selection of special judges in civil matters. It does not apply to the selection of special judges in criminal and juvenile matters.

2.10 The judges in District 3 shall meet on or before May 1 of each year to review the WCM from the previous year, shall meet during the month of September in each year to review the impact of this rule and, no later than October 1 of each year, shall adopt a rule for the ensuing year.

2.11 All previous local rules adopted by the judge in District 3 regarding the selection of special judges in civil matters are repealed to the extent that they are inconsistent with this Rule.

2.12 This Rule shall be effective ~~July 31, 2006~~ or upon approval by the Indiana Supreme Court if required.

LR01-TR79-03

3.1 In the event of the recusal or disqualification of the presiding Adams Circuit Court Judge, for decedent estate matters, the judge of the Adams Superior Court shall serve as special judge.

3.2 All decedent estate cases shall be filed in the Adams Circuit Court.

3.3 In the event of the recusal or disqualification of the presiding Adams Circuit Court Judge or the presiding Adams Superior Court Judge a panel of judges consisting of the other judicial officer sitting in Adams County, the regular judge of the Jay Circuit Court, the regular judge of the Jay Superior Court, the regular judge of the Blackford Superior Court, the regular judge of the Wells Superior Court and the regular judge of the Wells Circuit Court is created. Selection shall be done pursuant to TR 79(H). The method of selection from the list of special judges shall be that the Judge of the Adams Circuit Court for his court and the Judge of the Adams Superior Court for his court shall each maintain a ~~the~~ list of the panel and upon such recusal or disqualification, going from top to bottom, select the special judge until each judge on the list has been selected once, before any one judge is selected twice, et cetera; provided however, that in the event one defendant has two or more cases, all such cases shall be assigned to the special judge first selected. This list shall remain confidential to the judge and designated staff. The special judge selected thereunder, with agreement of the parties, may ~~shall have the sole discretion to~~ transfer the proceeding under Trial Rule 79(M).

3.4 The judges of Adams County shall meet at least annually to review the impact of these rules and in particular the balancing of caseloads between the Courts.

3.5 The Local Rules 3.1 through 3.5 shall be forwarded for review by the Indiana Supreme Court and upon approval of the Indiana Supreme Court these Rules shall become effective upon such approval.

LR01-TR79-04

This rule shall apply to the reassignment of cases and the selection of a senior judge in juvenile, paternity and domestic relation cases where there is an order of disqualification or recusal entered in the case in the Adams Circuit Court

After September 13, 1999 whenever the Judge of the Adams Circuit Court has a conflict of interest in any juvenile, paternity or domestic relations case which requires him to recuse himself because of prior contact with the case as Deputy Prosecuting Attorney, the case shall be assigned to the Senior Judge Vern E. Sheldon appointed to the Adams Circuit Court for all further proceedings.

~~Senior Judge Vern E. Sheldon~~ Such Senior Judge shall accept jurisdiction under the provisions of this rule unless disqualified under the Code of Judicial Conduct or excused from service by the Indiana Supreme Court. The reassignment of such case shall be entered in the Chronological Case Summary of the case. An oath or special order accepting jurisdiction shall not be required. ~~Senior Judge Vern E. Sheldon~~ The Senior Judge shall retain jurisdiction of the case for all future proceedings unless a specific statute or rule provides to the contrary or the senior judge is unavailable by reason of death, sickness, absence, or unwillingness to serve. ~~If further reassignment is required, because of the retirement of Senior Judge Vern E. Sheldon and if a Senior Judge has been appointed to the Adams Circuit Court, such reassignment shall be to such successor Senior Judge.~~ If further reassignment is required, ~~or~~ the selection of a successor special judge or senior judge ~~it~~ shall be in the same manner as set forth in ~~the rules of civil procedure~~ Local Rule TR79-03.3.

LR01-TR79-05

This rule shall apply to the reassignment of cases and the selection of a Senior Judge in criminal or domestic relation cases where there is an order of disqualification or recusal entered in the case in the Adams Superior Court.

After December 31, 2008 whenever the Judge of the Adams Superior Court has a conflict of interest in any criminal or domestic relations case which requires him to recuse himself because of prior involvement with the case as a public defender attorney or as attorney for one of the parties, the case shall be assigned to the Senior Judge appointed to the Adams Superior Court for all further proceedings.

Such Senior Judge shall accept jurisdiction under the provisions of this rule unless disqualified under the Code of Judicial Conduct or excused from service by the Indiana Supreme Court. The reassignment of such case shall be entered in the Chronological Case Summary of the case. An oath or special order accepting jurisdiction shall not be required. The Senior Judge shall retain jurisdiction of the case for all future proceedings unless a specific statute or rule provides to the contrary or the Senior Judge is unavailable by reason of death, sickness, absence or unwillingness to serve. If further reassignment is required, the selection of a successor Special Judge or Senior Judge shall be in the same manner as set forth in Local Rule TR79-03.3.